ALVYN G. NOVOTNY

IBLA 81-358 Decided June 16, 1981

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting appellant's oil and gas lease offer NM 42080 for parcel No. NM-598.

Reversed and remanded.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents -- Oil and Gas Leases: Applications: Filing

   Under the provisions of 43 CFR 3102.2-6(b), where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section, provided that a list setting forth the name and address of each such offeror or applicant participating under the agreement be filed with the proper Bureau of Land Management Office not later than 15 days from each filing of applications under 43 CFR Subpart 3112.

APPEARANCES: Hugh Holbert, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Alvyn G. Novotny appeals from the December 9, 1980, decision of the New Mexico State Office, Bureau of Land Management (BLM), rejecting his offer for parcel No. NM-598, which was drawn with first priority in the simultaneous oil and gas drawing held on August 21, 1980. Appellant's offer, which was assigned serial number NM 42080, was

filed by Sierra Oil and Gas Lease Corporation (Sierra), which signed his lease application as his agent. 1/

On October 7, 1980, the State Office requested additional evidence relating to appellant's qualifications, which evidence was filed on November 6, 1980. In its decision of December 9, the State Office adverted to Novotny's answers, noting that while Sierra had submittd a copy of its general agreement and a list of its clients who participated in the drawing, there was no signed agreement granting Sierra the power of agent to sign for Novotny and thus the State Office argued that the offer variously violated 43 CFR 2102.2-6(a), 3102.2-1(a), and 3102.2-1(c). We reverse.

[1] The actions of the State Office can best be characterized as based on a total misreading of the regulations. The State Office decision relied primarily on 43 CFR 3102.2-6(a). That regulation provides:

> (a) Any applicant receiving the assistance of any other person or entity which is in the business of providing assistance to participants in a Federal oil and gas leasing program shall submit with the lease offer, or the lease application if leasing is in accordance with subpart 3112 of this title, a personally signed statement as to any understanding, or a personally signed copy of any written agreement or contract under which any service related to Federal oil and gas leasing or leases is authorized to be performed on behalf of such applicant. Such agreement or understanding might include, but is not limited to: a power of attorney; a service agreement setting forth duties and obligations; or a brokerage agreement. [Emphasis supplied.]

While there is some support for the State Office decision in this regulation, such support evaporates when 43 CFR 3102.2-1(a) is examined in conjunction with 43 CFR 3102.2-1(b). That latter section provides:

1/ We would point out that while the notice of appeal was filed on Jan. 8, 1981, the case file was not transmitted by the State Office until Feb. 19, 1981, over 40 days later. We would remind the New Mexico State Office that case files are to be transmitted to the Board within 5 days of the receipt of a notice of appeal. If the State Office desires to maintain a dummy file it is free to do so. The State Office must, however, expeditiously transmit the original file to the Board.

Appeals are docketed upon receipt of the case file. Thus, the inordinate and unexplained delay in sending this case file worked to the detriment of the appellant, since his appeal was docketed at the Board long after he had actually perfected it. Rights of appellants are not to be sacrificed for the convenience of the State Office.

> (b) Where a uniform agreement is entered into between several offerors or applicants and an agent, a single copy of the agreement and the statement of understanding may be filed with the proper office in lieu of the showing required in paragraph (a) of this section. A list setting forth the name and address of each such offeror or applicant participating under the agreement shall be filed with the proper Bureau of Land Management office not later than 15 days from each filing of offers or applications if leasing is in accordance with subpart 3112 of this title. [Emphasis supplied.]

Appellant correctly points out that 43 CFR 3102.2-6(b) is an alternative to 43 CFR 3102.2-6(a) and that compliance with subpart "b" obviates the need to comply with subpart "a".

The State Office reference to 43 CFR 3102.1(c) merely compounds its original error. That regulation is a permissive regulation which has a totally different focus. 2/ In essence, 43 CFR 3102.1(c) provides a mechanism where one may, if one so desires, place on file evidence of agency qualifications and thus in future filings merely make reference to the serial number assigned to the statement, rather than file a copy of the agreement and a list of the participants every time a filing is made. Thus, filing under 43 CFR 3102.1(c) and insertion of the assigned serial number on the drawing entry card constitutes another independent method of complying with the disclosure requirement. It is not, however, a mandatory regulation and it was error for the State Office to indicate that compliance therewith was necessary.

Our review of the record convinces us that appellant's filings comport with the letter and intent of the regulations and the State Office decision rejecting the application is accordingly reversed.

2/ The State Office supported its decision in a memorandum to the Field Solicitor dated Feb. 9, 1981, arguing that "without executed powers of attorney, a leasing service can file cards for hundreds of fictitious persons which is exactly what the new regulations are supposed to eliminate." We would point out that in order to comply with 43 CFR 3102.6-2(b), a filing service must file, in each drawing, a list of participating clients with their home addresses. Assuming a situation in which a filing service was willing to manufacture a few hundred fake names and addresses, all in violation of the criminal sanctions provided in 18 U.S.C. § 1001 (1976), we find it difficult to believe that the filing service would then blanch at the necessity of submitting faked powers of attorney.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and remanded.

James L. Burski
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Gail M. Frazier
Administrative Judge